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August 18, 2004

Jeff S. Jordan
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 5489

Dear Mr. Jordan:

As counsel for Citizens for a Sound Economy, we hereby respond to the Complaint filed in the above designated MUR.

Citizens for a Sound Economy ("CSE"), which recently changed its name to FreedomWorks, Inc., is a § 501(c)(4) membership corporation.

Initially, CSE notes that the Complaint is based upon hearsay contained in newspaper articles. As the attached affidavit demonstrates, nearly all of the allegations contained in the Complaint are erroneous. For example, there was no coordination of activities between CSE, the Nader campaign, or the Bush-Cheney campaign. Mere repetition by the Complainant does not make the allegations true. CSE did not use Bush-Cheney phones to make any phone calls. CSE did *not* circulate any petitions for the Nader campaign.

CSE did, however, pay for and operate a phone bank urging its members (not "state voters") to sign petitions to place Nader on the ballot. The purpose of the calls is irrelevant; however, CSE has stated that urging people to sign petitions merely furthers CSE's efforts of voter outreach and voter education and helps to broaden the debate by increasing ballot access. Having Nader on the ballot will highlight key economic issues and the candidates' positions on issues of importance to CSE and its members.

Complainant alleges that CSE's phone bank activities constituted prohibited coordinated and unreported contributions and expenditures with the Nader and Bush-Cheney campaigns. Complainant also alleges that CSE's phone bank constituted an unlawful independent expenditure. Complainant additionally alleges that CSE failed to use required disclaimers. Finally, Complainant alleges CSE made unlawful expenditures and coordinated the circulation of nominating petitions. Each of these allegations will be dealt with in turn.

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Counts 1 and 3

Complainant alleges that CSE coordinated its phone bank with Bush-Cheney and with the Nader campaign, thus resulting in a prohibited coordinated expenditure or in-kind contribution.

The term "contribution" is partly defined as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office" or "the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose." 2 U.S.C. § 431(8)(A)(i) and (ii). The term "contribution" does *not* include "any payment made or obligation incurred by a corporation or a labor organization which, under section 441b(b) of this title, would not constitute an expenditure by such corporation or labor organization." § 431(8)(B)(vi).

As reflected in the definition of contribution, something of value must be *given* to a candidate, party committee or political committee for the purpose of influencing a federal election. In-kind donations of any goods or services without charge or at a discount are also considered treated as contributions.

The facts clearly indicate in this case that nothing was *given* or *donated* to Nader for President 2004 or Bush-Cheney '04. Nor did CSE pay the compensation of another person for services rendered to the Nader campaign. As the attached affidavit shows, CSE did not coordinate its phone calls with Nader for President 2004 or Bush-Cheney '04. CSE had no contact with the Nader campaign or the Bush-Cheney campaign regarding the intended audience, timing or substance of the script. The Bush-Cheney campaign office did not provide office space or any other assistance to CSE to carry out its phone bank, as alleged in paragraph 7. Exhibit A, cited by the Complainant for this allegation, contains no such support. CSE did not give or otherwise provide its mailing list to the Bush-Cheney campaign. Thus, CSE's phone calls were an independent disbursement, which cost less than \$400.00.

Additionally, the cost of the phone calls cannot be considered to be a contribution because they are specifically excluded from the definition of contribution. Specifically, the phone calls do not constitute an expenditure under § 441b(b) because they were made to members of CSE, not to "state voters" as alleged by Complainant.

Complainant bases her coordination argument on allegations that the activities of CSE and Bush-Cheney were "virtually identical." First, there is no factual support for the allegation in paragraph 8 that the Bush-Cheney phone calls were virtually identical to CSE's. No Bush-Cheney phone script is provided.

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Second, Complainant alleges in paragraph 16, without any factual support, that Bush-Cheney appeared to have been materially involved in determining the content, the intended audience, and the timing, and the fact that the Bush-Cheney campaign engaged in "virtually identical" activities "confirms" that the campaign conveyed information about its plans, projects, activities and needs. As the attached affidavit shows, CSE independently decided to pay for a phone bank, directed the phone bank to its members, and independently developed the script. CSE had no contact, let alone substantial discussion or material involvement, with the Bush-Cheney campaign or the Nader campaign. Merely because the end activity – encouraging citizens to sign Nader's petitions – is the same, does not, ipso facto, result in coordination. Therefore, these activities are not, as Complainant alleges in paragraph 17, independently sufficient to establish coordination.

Complainant's allegations that the phone bank activity was coordinated with the Nader campaign also fall flat. CSE had no contact with the Nader campaign. Exhibit E, attached to the Complaint, refutes Complainant's allegations that CSE's activities were coordinated with the Nader campaign: "Nader supporter Greg Kafoury says he's never spoken to Russ Walker. . . ." Furthermore, the Nader campaign's alleged "refusal to distance itself" is not evidence that the Nader campaign "suggested or requested the phone bank," see paragraph 28, nor is it sufficient to prove coordination. A "refusal to distance itself" is not the same as "assenting" to the communication.

Finally, Complainant's allegations in paragraph 13 are easily refuted. As the attached affidavit shows, CSE has not circulated petitions, and has no plans to circulate petitions or gather signatures. Nor is there anything impermissible if CSE were to encourage its members to volunteer to circulate the petition because CSE is free to communicate with its members on any topic and may expressly advocate the election or defeat of a candidate in these communications.

Count 2

Having already shown above that no in-kind contribution was made, and that no coordination occurred resulting in a coordinated expenditure, the other part of the analysis is whether CSE's payment for the phone calls constitutes an expenditure, i.e., an independent expenditure. An analysis of the phone script used, attached to this response, demonstrates that it does not contain express advocacy and, therefore, cannot constitute an independent expenditure.

CSE admits that it is a corporation. However, the remaining allegations in paragraph 22 are irrelevant to this matter; it is permissible and legal for CSE to accept corporate contributions.

Neither the script used, nor Complainant's allegations of express advocacy in the script that was not used ("we have a chance to stop John Kerry from winning" and "Can

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we count on you to come out on Saturday night and sign the petition to nominate Ralph Nader?") constitute express advocacy.

As the Commission is well aware, a communication must contain express words of advocacy before it meets the definition of independent expenditure. Neither the press release, nor either of the phone scripts contain language advocating the election or defeat of any clearly identified candidate. Nowhere in the script are listeners urged to "vote for," "vote against," "elect" or "defeat" any candidate. While the script encourages the listener to sign a petition to put Nader on the ballot, this is not the equivalent of urging the listener to vote for Nader or against Kerry. Urging people to sign petitions merely furthers CSE's efforts of voter outreach and voter education and helps to broaden the debate by increasing ballot access. Having Nader on the ballot will highlight key economic issues and the candidates' positions on these issues.¹ A finding that encouraging individuals to sign a petition to get a candidate on the ballot is equivalent to urging them to vote for or against a candidate will have unintended consequences. Not only will it limit debate, it will result in less informed citizens and decreased participation in our democratic process.

As the attached affidavit demonstrates, CSE did not provide, purchase, rent or loan its list of members' telephone numbers to Bush-Cheney '04, nor did CSE receive, purchase, rent or receive a list of telephone numbers from the Oregon Republican Party or Bush-Cheney '04. The attached affidavit also demonstrates that CSE did not use the telephones of the Oregon Republican Party or Bush-Cheney '04.

Count 5

As shown above, the script did not contain express advocacy. Therefore, no disclaimer was required. Furthermore, even if the Commission finds that the script contains express advocacy, the calls were made to CSE members and therefore, § 110.11(f)(2) exempts such communications from the disclaimer requirements.

Count 6

As shown in the attached affidavit, CSE has not circulated petitions or gathered signatures, and has no plans to circulate petitions or obtain signatures for the Nader campaign. Therefore, this allegation must be dismissed.

¹ If the Commission finds that the script does not contain express advocacy, then the cost of the communication cannot be a contribution. As the court in *Orloski v FEC*, 759 F.2d 156, 163 (D.C. Cir. 1986) noted, "Under the Act this type of 'donation' is only a 'contribution' if it first qualifies as an 'expenditure' and, under the FEC's interpretation, such a donation is not an expenditure unless someone at the funded event expressly advocates the re-election of the incumbent or the defeat of an opponent or solicits or accepts money to support the incumbent's re-election." As noted above, the communication does not meet the definition of expenditure, was not coordinated, and, therefore, cannot be regulated as a contribution.

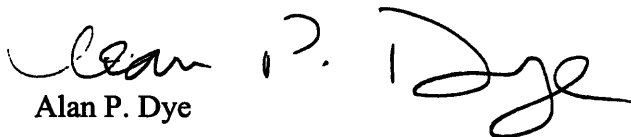
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Based on the above, CSE respectfully requests that the Complaint be dismissed.

If you have any questions, please do not hesitate to contact us.

Very truly yours,


Alan P. Dye


Heidi K. Abegg

Attorneys for Oregon Citizens for a Sound
Economy and Russ Walker

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**BEFORE THE
FEDERAL ELECTION COMMISSION**

In Re

Nader for President 2004)	
Bush-Cheney '04, Inc.)	MUR 5489
Citizens for a Sound Economy)	

AFFIDAVIT OF RUSS WALKER

I, Russ Walker, being duly sworn, do depose and say:

1. I make this statement in connection with MUR 5489 to record certain facts that are within my personal knowledge.

2. I am Northwest Director for Citizens for a Sound Economy and was involved in arranging for the calls at issue to be made.

3. The press release attached to this response contains a true and accurate transcription of the phone script used to make calls to Oregon CSE members, other than changes in the name of the school and the time that were made for each locality. No other script was used.

4. The decision to make telephone calls, and the development of the script, the intended audience, and the timing of the calls was made independently by CSE and without any coordination with Nader for President 2004, the Oregon Republican Party or Bush-Cheney '04.

5. CSE only used the telephone numbers of its members in Oregon to make the calls.

6. CSE did not purchase, rent or receive any telephone numbers from the Oregon Republican Party or Bush-Cheney '04. CSE did not sell, rent, or give any telephone numbers to the Oregon Republican Party or Bush-Cheney '04.

7. CSE has not circulated any petitions or collected any signatures for the Nader campaign. CSE has no plans to circulate petitions or collect any signatures for the Nader campaign.

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Under 8. CSE paid for the cost of the telephone calls and spent approximately
\$ ~~4000~~ to make the calls.

9. CSE did not use Oregon Republican Party or Bush-Cheney '04 telephones
to make calls.

Further affiant sayeth not.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 11, 2004.


Russ Walker

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